IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO: 23891 of 2004

Between:

B. Kass Naik S/o B. Sanker Naik
R/o Adapala Street, Kadiri (TQ) and Mandal, Anantapur District

..... PETITIONER

AND

The Depot Manager, APSRTC., Kadiri Depot, Anantapur District

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or order or orders or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondent without conducting any enquiry, imposing major penalty vide proceedings No. 02/62(22)/91 KDR dated 10-9-1991 as illegal, arbitrary unjustified, unsustainable, contrary to law and in violation of principles of natural justice and set a side the same and consequently direct the respondent to add three annual increments to the pay of the petitioner and pass such other and further order or orders.

Counsel for the Petitioner: MR.A.RAMA RAO

Counsel for the Respondent: MR.P.VINAYAKA SWAMY

The Court at the stage of admission made the following:

ORDER:

The petitioner is working as a Conductor in the respondent-Corporation. He was issued a charge memo on 14-03-1991 and without conducting any enquiry and without giving any opportunity, the respondent passed final orders on 10-09-1991 imposing the major penalty of with holding three annual increments with cumulative effect. The petitioner questioned the said order on the ground that postponing the annual increments without conducting a regular enquiry in the department itself is bad and contrary to the Rules and Regulations.

2. The learned counsel for the petitioner relied on a judgment of the Supreme Court in **Kulwant Singh Gill v. State of Punjab** wherein the Supreme Court held that since the punishment imposed on the petitioner is a major punishment, the order cannot be sustained without an enquiry. The petitioner therefore seeks to declare that the order is illegal and it is liable to be set aside.

3. The petitioner after receiving the adverse orders slept over the matter for a period of 13 years. There are latches on his part in asserting his right regarding this issue. Though the impugned order is liable to be set aside on account of non-conducting of enquiries, in view of the judgment of the Supreme Court in **Kulwant Singh Gill (**1 supra), but considering the peculiar facts of the case, I am of the view that it would be appropriate if the punishment imposed on the petitioner is treated as reduction of three increments without cumulative effect. The petitioner is not entitled for the difference of the amount, if any, by virtue of this order for the period from the date of the impugned order till the date of this order. But, he is entitled to get increments on notional calculation from the date of this order to which he is entitled, as he had not been imposed penalty of reduction of three increments without cumulative effect.

4. The Writ Petition is accordingly disposed of with the above observations. No order as to costs.

22nd December, 2004. ----------

SKM K.C.BHANU, J

TO

1 The Depot Manager, APSRTC., Atmakur (N) Depot, Nellore District

2 Two C.D. Copies.